

RECEIVED

OCT - 7 1996

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) CC Docket No. 95-116
)
Telephone Number Portability) RM 8535
)
) FCC 96-286

DOCKET FILE COPY ORIGINAL

REPLY TO PETITION FOR RECONSIDERATION AND CLARIFICATION
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
AND THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES

The National Telephone Association ("NTCA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), ("the Associations"), reply to comments by parties opposing their Petition for Reconsideration and Clarification of the Commission's First Report and Order released in the above proceeding on July 2, 1996. The associations together represent approximately 800 small LECs serving rural throughout the United States.

In their petition, the Associations asked the Commission to reconsider and clarify its rules to provide that rural telephone companies are only required to provide long term service provider number portability if they receive a specific request for service. They also asked the Commission to consider the impact of this alternative on the rural companies that are small businesses in

No. of Copies rec'd
List A B C D E

0212

connection with the analysis it is required to perform under the Regulatory Flexibility Act ("RFA").

In its opposition, Time Warner Communications Holdings, Inc. ("Time") opposes the suggestion that small LECs should only be required to provide number portability upon receipt of a bona fide request. However, Time acknowledges that "certain small or rural telephone companies will not face competition even if they provide service within one of the top 100 MSAs...." Time gives no explanation for its opposition. It merely asserts "carriers should be required to apply for waivers which demonstrate to the Commission why a carrier should be relieved of the requirement to deploy number portability in accordance with the schedule for the top 100 MSAs.¹ MCI Telecommunications Corporation, ("MCI"), while insisting that it is "completely unnecessary" to mandate number portability for "intermediate" networks like its own, opposes the Associations request. The only reason it gives is the assertion that "providing the type of blanket waivers requested... would substantially lessen the likelihood that local exchange competition will ever reach the areas served by these companies."²

The Commission should disregard the Time and MCI oppositions. Neither of these parties has refuted the basis of the Associations' request for clarification and reconsideration. The fact is that Congress indicated that the obligations imposed on all LECs in Section 251(b) were not intended to apply to any LEC, let alone a small rural LEC, until a LEC received a request to provide the particular service or access.³ Other parties are in agreement with the

¹ Time Opposition at 7.

² MCI at 18-19.

³ Associations Petition at 3.

Associations.⁴ They also state that mandatory deployment by rural telephone companies in the 100 largest MSAs will impose undue financial and administrative burdens on these companies and are not necessary.⁵

Neither Time nor MCI have shown that competition will be assisted or the public benefitted by a rule which requires deployment of number portability in the absence of a need for the provision of services by a particular carrier. Both parties merely make bald assertions that a general waiver is not appropriate. They completely fail to address the cost issue and the burden that unnecessary deployment and numerous case-by-case waiver applications will impose on small companies.

ALLTEL and Cincinnati, on the other hand, both indicate that it is against the public interest to require the smaller companies to immediately expend resources for deploying number portability where there is no demand. ALLTEL correctly suggests that the wasteful expenditure of resources can be avoided if smaller carriers are only required to invest in those technologies which have been tested and proven reliable by the larger carriers in the major markets.⁶ Cincinnati also points out that carriers that are a fraction of the size of the large companies cannot afford to incur the costs associated with adequate testing of new technology.⁷

The Associations urge the Commission to consider the cost factors brought to its attention in the ALLTEL and Cincinnati replies instead of the bald assertions by MCI and Time. It would

⁴ September 27, 1996 Cincinnati Bell Telephone at 3, ALLTEL at 2.

⁵ USTA September 27, 1996 Comments at 3.

⁶ ALLTEL September 27, 1996 Comments at 3.

⁷ Cincinnati Comments at 3.

be against the spirit of the Act for the Commission to ignore the smaller companies' legitimate interests in deploying technologies only when they must do so to meet competitor requests or other demand and to thus avoid imprudent or unnecessary investments. These companies should not be required to deploy and pay for services that may only be needed at some future date to benefit potential competitors that may never materialize. The companies and their customers will obviously be detrimentally affected if they deploy technology and competitors do not request service. Potential competitors, on the other hand, will not suffer if the Commission clarifies the rule to require the small carriers to provide service only after receiving a bona fide request. It was surely not the intent of Congress to create obligations that would do harm to incumbent LECs while providing no public benefit. A clarification to this effect will permit the Commission to accommodate competition as well as the public's interest in preventing wasteful investments that impose unnecessary costs on the consuming public while providing no discernible benefit to the consumer.

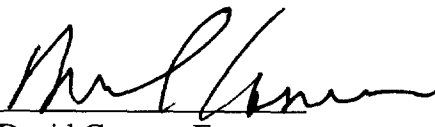
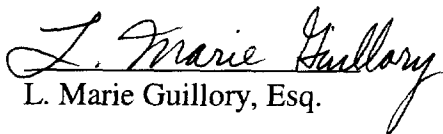
The ALLTEL and Cincinnati replies illustrate further why the Commission should consider the oppositions and support for the Associations' petition in conjunction with its duty to perform an analysis addressing the impact of the rules on incumbent LECs that are small businesses under the RFA. All NTCA and OPASTCO members come under the Small Business Administration ("SBA") definition of a "small business" or "small entity" subject to the protections afforded by the Regulatory Flexibility Act ("RFA").⁸ As ALLTEL and Cincinnati point out, these small businesses do not have the unlimited resources needed to test and

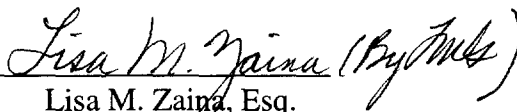
⁸ Association Petition at 4.

experiment with different number portability technologies.⁹ They should not be required to adhere to mandatory schedules if there is no request for service just because they happen to provide service in an MSA that is among the group of the 100 largest . A governmentally imposed rule that requires uniformity for the sake of uniformity surely serves no public purpose in a democracy. The Commission's interest in promoting competition can be just as easily served by a rule that requires deployment upon receipt of a bona fide request.

For the above stated reasons, NTCA and OPASTCO request that the Commission grant their request for clarification and reconsideration.

Respectfully submitted,

By: 
David Cosson, Esq.

L. Marie Guillory, Esq.

By: 
Lisa M. Zaina, Esq.

NTCA
2626 Pennsylvania Ave., NW
Washington, D.C. 20037
(202) 298-2300

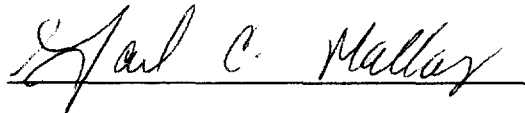
OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, D.C. 20036
(202) 659-5990

October 7, 1996

⁹ Cincinnati at 3, ALLTEL at 2-3.

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply to Petition for Reconsideration and Clarification of the National Telephone Cooperative Association and Organization for the Promotion and Advancement of Small Telecommunications Companies in CC Docket No. 95-116, RM 8535 was served on this 7th day of October 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

A handwritten signature in cursive script, reading "Gail C. Malloy", is written over a horizontal line.

Gail C. Malloy

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802-0106
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844-0105
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

Mr. Kent Nilsson, Chief
Network Service Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 253
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Competitive Pricing Division
Common Carrier Bureau
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

Daniel M. Waggoner, Esq.
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Richard J. Metzger, Esq.
Association for Local
Telecommunications Service
1200 19th Street, N.W. Suite 560
Washington, D.C. 20036

Brian Conboy, Esq.
Sue D. Blumenfeld, Esq.
Thomas Jones, Esq.
Willkie Farr & Gallagher
1155 21st Street, N.W.
Washington, D.C. 20036-3302

Jay C. Keithley, Esq.
Leon M. Kestenbaum, Esq.
Norina Moy, Esq.
Sprint Corporation
1850 M Street N.W., Suite 1110
Washington, D.C. 20036

John L. Bartlett
Angela N. Watkins
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Caressa D. Bennet, Esq.
Gregory Whiteaker, Esq.
Bennet & Bennet, PLLC
1019 19th Street, N.W.
Washington, D.C. 20036

Stephen R. Effros, President
Mr. James H. Ewalt, EVP
Cable Telecommunications
Association
P.O. Box 1005
3950 Chain Bridge Road
Fairfax, VA 22030

John M. Goodman, Esq.
Bell Atlantic Telephone Company
1133 20th Street, N.W.
Washington, D.C. 20036

Glenn S. Rabin, Esq.
Alltel Corporation
655 15th Street, N.W.
Suite 220
Washington, D.C. 20005

Michael F. Altschul, Esq.
Mr. Randall S. Coleman, VP
Cellular Telecommunications
Industry Association
1250 Connecticut Ave., N.W.
Suite 200
Washington, D.C. 20036

Mary McDermott, VP & Esq.
Linda Kent, Esq.
Charles D. Cosson, Esq.
Keith Townsend, Esq.
USTA
1401 H St., N.W., Suite 600
Washington, D.C. 20005-2136

M. Robert Sutherland, Esq.
Theodore R. Kingsley, Esq.
BellSouth Corp & BellSouth Telcomms, Inc.
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309

Marlin D. Ard, Esq.
Nancy C. Woolf, Esq.
Pacific Telesis Group
140 New Montgomery Street
San Francisco, CA 94105

Margaret E. Garber, Esq.
Pacific Telesis Group
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Mark C. Rosenblum, Esq.
Roy E. Hoffinger, Esq.
Clifford K. Williams, Esq.
AT&T
295 N. Maple Avenue
Room 17-4353I3
Basking Ridge, NJ 07920

Christopher J. Wilson, Esq.
Frost & Jacobs
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Thomas E. Taylor, Esq.
Sr. Vice President-General Counsel
Cincinnati Bell Telephone Company
201 East Fourth Street, 6th Floor
Cincinnati, Ohio 45202

Larry A. Blosser, Esq.
Donald J. Elardo, Esq.
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Richard L. Cys, Esq.
Davis Wright Tremaine
1155 Connecticut Avenue, NW
Suite 700
Washington, D.C. 20036

Albert H. Kramer, Esq.
Robert F. Aldrich, Esq.
Christopher T. McGowan
Dickstein, Shapiro & Morin, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

Woody Traylor
MCI Telecommunications Corporation
2250 Lakeside Blvd.
Richardson, TX 75082

Elizabeth G. Kistner
EGK Consulting
3 Spoede Ridge Lane
St. Louis, Missouri 63141

Stephen P. Bowen, Esq.
Blemenfeld & Cohen
101 California Street
42nd Floor
San Francisco, California 94111

Ms. Wanda M. Harris
Competitive Pricing Division
Common Carrier Bureau
1919 M Street, N.W.
Room 518
Washington, D.C. 20554